

HOUSE No. 6756

The Commonwealth of Massachusetts



312066 0273 8489 3

FIRST INTERIM REPORT

of the

SPECIAL COMMISSION

Relative to

THE PROCEDURES AND GUIDELINES FOR

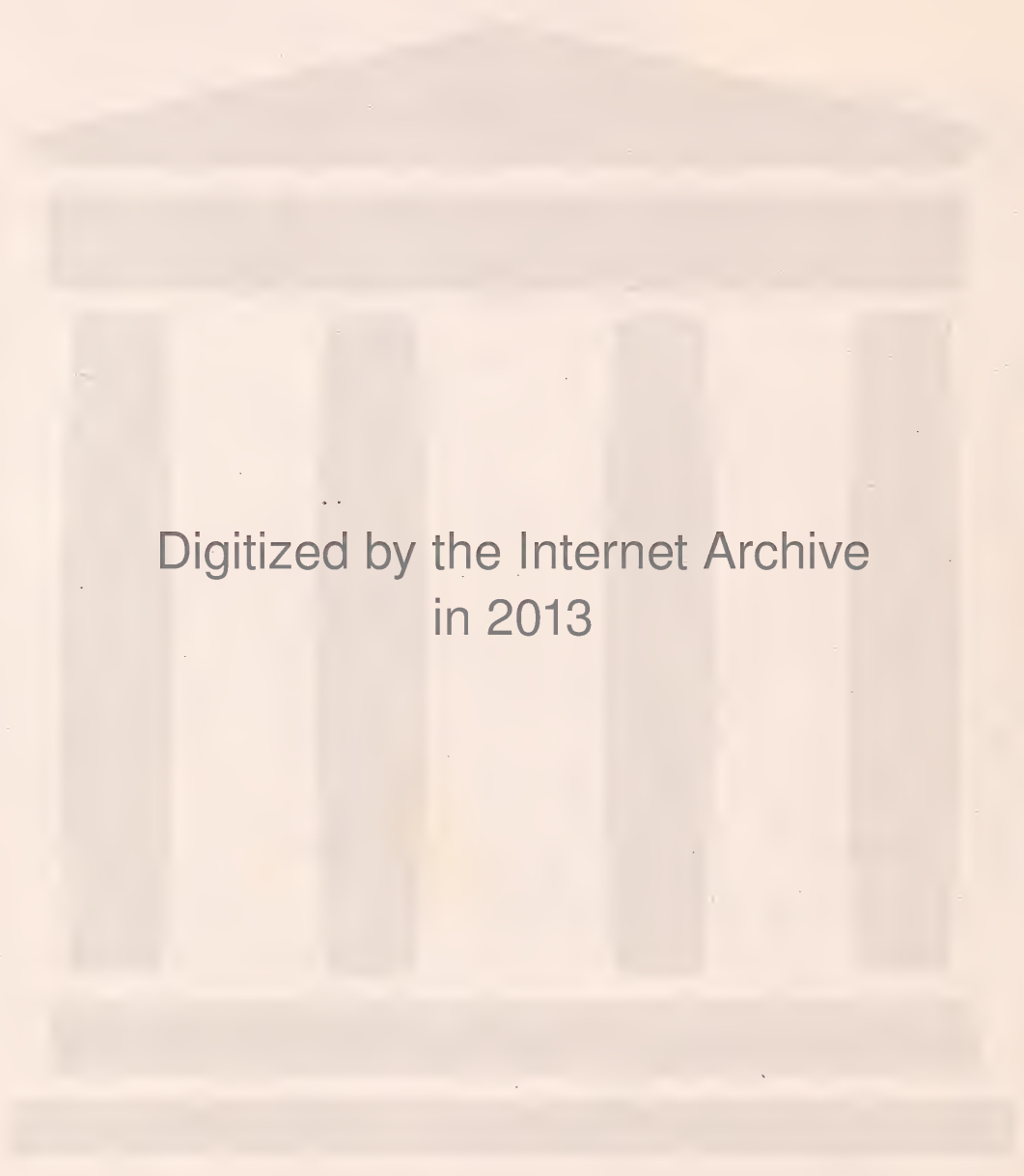
SITING HAZARDOUS WASTE FACILITIES

IN THE COMMONWEALTH

(under Section 4 of Chapter 704
of the Acts of 1979)

June 25, 1980.

GOVERNMENT DOCUMENTS
COLLECTION
AUG 3 1983
University of Massachusetts
Depository Copy



Digitized by the Internet Archive
in 2013

<http://archive.org/details/firstinterimrepor00mass>

CONTENTS

Members of the Commission.	6
Mandate of the Commission.	7
Letter of Transmittal.	9
Summary.	11
Brief Report of Findings and Recommendations	15
<u>An Act to Encourage the Development of Hazardous Waste Processing and Disposal to Protect the Public Health, Safety and Environmental Resources of the Commonwealth . .</u>	<u>25</u>
SECTION 1: Adds to Liability Requirements of Ch 704.	25
SECTION 2: Adds Criteria to Ch 704's Licensing Requirements for Hazardous Waste Facilities.	26
SECTION 3: Adds Landfill Criteria to Ch 704's Licensing Requirements for Hazardous Waste Facilities.	27
SECTION 4: Criteria for Board of Health Site Assign- ments for Hazardous Waste Facilities (Amends Ch 111 Section 150A).	28
SECTION 5: Board of Health Review Procedures and Appeals	29
SECTION 6: Authorizes Local Board of Appeals or Special Permit Granting Authority to Approve location of Hazardous Waste Facility Irrespective of Local Zoning.	31
SECTION 7: Prohibits DEM from using Eminent Domain to Acquire site unless State and Local Permits have been approved and a Siting Agreement has been established.	32
SECTION 8: Severability Clause for Ch 21C of the General Laws.	32
SECTION 9: Massachusetts Hazardous Waste Facility Siting Act.	33
<u>Section 1: Title.</u>	<u>33</u>
<u>Section 2: Definitions.</u>	<u>33</u>
<u>Section 3: Department of Environmental Management</u>	<u>35</u>
<u>Section 4: Hazardous Waste Facility Site Safety Council</u>	<u>38</u>
<u>Section 5: Confidentiality of Information</u>	<u>43</u>
<u>Section 6: Capacity Shortfall Report.</u>	<u>46</u>
<u>Section 7: Notice of Intent</u>	<u>47</u>
<u>Section 8: Briefing Session</u>	<u>49</u>
<u>Section 9: Sites Suggestion Proposals</u>	<u>49</u>
<u>Section 10: Project Impact Report.</u>	<u>52</u>
<u>Section 11: Technical Assistance Grants.</u>	<u>54</u>
<u>Section 12: Siting Agreement Specifications.</u>	<u>54</u>
<u>Section 13: Establishing a Siting Agreement.</u>	<u>56</u>
<u>Section 14: Compensation to Abutting Communities</u>	<u>57</u>

<u>Section</u> 15:	Arbitration.	59
<u>Section</u> 16:	Local Permits.	61
<u>Section</u> 17:	Site Acquisition	61
<u>Section</u> 18:	Grandfather clauses.	62
<u>Section</u> 19:	Severability	63

Acknowledgements

The Special Commission on Hazardous Waste would like to thank the many people who have contributed to the production of this report, and especially for the efforts of Debra Sanderson, Charles Perry, Stephen Brewer, Michael O'Hare, Chip Nylen, Ann Rappaport, Jim Coleman, Elizabeth Carroll, Susan Barber, Virginia Wells, Seth Jaffee, Nancy Naeye, Paul Meagher, Jill O'Connell, Fran Hogan, Bob Goudie, and the secretarial staff of the Executive Office of Environmental Affairs.

MEMBERS OF THE COMMISSION

Sen. ROBERT D. WETMORE, Senate Chairman
Sen. CAROL C. AMICK
Sen. ROBERT C. BUELL
Rep. RICHARD J. DWINELL, House Chairman
Rep. THEODORE J. ALEIXO
Rep. NICHOLAS J. COSTELLO
Rep. ROGER R. GOYETTE
Rep. RICHARD R. SILVA
Dr. ANTHONY CORTESE, Commissioner, Department of Environmental
Quality Engineering
Mr. RICHARD E. KENDALL, Commissioner, Department of
Environmental Management
Mr. JOHN BEWICK, Secretary of Environmental Affairs
Mr. GEORGE S. KARIOTIS, Secretary of Economic Affairs
Mr. GEORGE A. LUCIANO, Secretary of Public Safety
Dr. ALFRED L. FRECHETTE, Commissioner, Department of Public
Health
Mr. LOUIS A. BOLDUC
Mr. ROBERT E. CUMMINGS
Ms. JOAN GARDNER
Ms. JUNE TAMMI
Mr. WILLIAM WALLACE

MANDATE OF THE COMMISSION

Section 4 of Chapter 704 of the Acts of 1979 makes the following provisions:

There is hereby established a special commission to consist of three members of the senate, one of whom shall be a co-chairman, five members of the house of representatives, one of whom shall be a co-chairman, the commissioner of environmental quality engineering or his designee, the commissioner of environmental management or his designee, the commissioner of public health or his designee, the secretary of environmental affairs or his designee, the secretary of economic affairs or his designee, the secretary of public safety or his designee and five persons to be appointed by the governor, one of whom shall represent the local government bodies, one of whom shall represent local boards of health, one of whom shall represent local health officers, one of whom shall represent industry, and one of whom shall be a member of the general public, knowledgeable in environmental protection.

Said commission shall:

- (a) investigate alternative procedures to be utilized by the authorities in granting local and state approval of sites for hazardous waste facilities;
- (b) investigate policies for creating a positive

iii

economic climate for the siting of hazardous waste disposal, transfer station and reclamation facilities;

(c) investigate the development of guidelines and criteria for the siting of disposal, transfer station and reclamation facilities;

(d) investigate the prohibition of siting hazardous waste landfills over aquifers, aquifer recharge zones, or groundwater flows supplying water to a municipality;

(e) consider the transfer of the present power and duties of the bureau of solid waste disposal, established by sections eighteen to twenty-five, inclusive, of chapter sixteen of the General Laws to the department of environmental quality engineering; and

(f) consider the prohibition of land disposal of hazardous waste when another reasonable alternative exists.

Said commission shall report to the general court the results of its investigation and study, and its recommendations, together with drafts of legislation necessary to carry such recommendations into effect by filing the same with the clerk of the house of representatives on or before the last Wednesday of June, nineteen hundred and eighty.

iv



The Commonwealth of Massachusetts
SPECIAL COMMISSION ON HAZARDOUS WASTE

Created by Chapter 704 of the Acts of 1979

State House, Boston 02133

Co-Chairmen

SEN. ROBERT D. WETMORE
REP. RICHARD J. DWINELL

June 24, 1980

To the Honorable Senate and House of Representatives:

We, the undersigned members of the special commission on hazardous waste authorized under the provisions of Chapter 704 of the Acts of 1979, to investigate alternative procedures, criteria, and guidelines to be utilized by the authorities in granting local and state approval of sites for hazardous waste facilities, to investigate any prohibitions of the use of landfills or the location of hazardous waste facilities, and to investigate policies for creating a positive economic climate encouraging the construction of hazardous waste facilities within the Commonwealth, have investigated the issues relating to the effective siting of environmentally sound and safely operating hazardous waste facilities, and herewith submit our first interim report and recommendations.

Respectfully submitted,

Sen. Robert D. Wetmore, Senate Chairman

Rep. Richard J. Dwinell, House Chairman

Sen. Carol C. Amick

Sen. Robert C. Buell

~~Rep. Theodore J. Aloise~~

Rep. Nicholas J. Costello

Rep. Roger R. Goyette

Rep. Richard R. Silva

Comm. Anthony Cortese

Comm. Richard E. Kendall

Sec. John Bewick

Sec. George S. Kariotis

Sec. George A. Luciano

Comm. Alfred L. Frechette

Robert D. Wetmore

Richard J. Dwinell

Carol C. Amick

Robert C. Buell

Nicholas J. Costello

Reserve My Right - Roger R. Goyette

Richard R. Silva

Anthony D. Cortese

Richard E. Kendall

John A. Bewick

George S. Kariotis

George A. Luciano

Alfred L. Frechette

v

June 12, 1960

Mr. Louis A. Bolduc

Mr. Robert E. Cummings

Ms. Joan Gardner

Ms. June Tammi

Mr. William Wallace

Louis A. Bolduc
R. E. Cummings
Joan Gardner
June Tammi
William Wallace

Summary: AN ACT TO ENCOURAGE AND EXPEDITE THE DEVELOPMENT OF HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES, TO PROTECT THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT OF THE COMMONWEALTH.

The legislation begins by establishing strict criteria that a proposed hazardous waste facility must meet before necessary state and local permits may be granted. These criteria promote shared state and local decision-making by specifying the public health and environmental issues that the Department of Environmental Quality Engineering (DEQE) must consider before granting state permits, and by specifying that a local board of health may refuse a site assignment for a facility if it finds that the facility poses a significant threat to public health or safety. In short, the legislation modifies the existing state and local permits required for the construction and operation of a hazardous waste facility, by more completely defining the criteria and conditions under which such permits may be granted or denied.

The legislation also directs the Department of Environmental Management to solicit proposals from private developers of hazardous waste facilities and to assist developers in preparing sound proposals, locating appropriate sites, and informing the public about these proposals. The development function is kept separate from DEQE's regulatory and permit granting function, and separate from the process management and public safety functions of the Hazardous Waste Facilities Site Safety Council created by this act.

The new Hazardous Waste Facility Site Safety Council, consisting of public members, technical experts, and state and local

officials, is designed to oversee the facility siting process and to ensure the protection of public health and safety.

The legislation establishes a negotiation and impact review process that runs simultaneously with the environmental reviews required by existing state and federal law (MEPA and NEPA). Under this process communities, state government, and land owners receive early notification from a developer of a proposal to construct a hazardous waste facility.

Potential host communities form Local Assessment Committees to study the proposed project, to assess its impacts on the community, to review the developers environmental impact report, and to negotiate a siting agreement with the developer.

These Local Assessment Committees will receive technical assistance grants to help them in these tasks and to encourage their informed and full participation in this process.

In short, the legislation seeks to make the existing state Environmental Review process useful by encouraging the developer and the community to utilize the draft environmental impact report as the basis for negotiating a siting agreement.

The legislation requires a contractual siting agreement between the developer and host communities. This siting agreement will provide compensation and incentives to communities accepting a hazardous waste facility, and may include such benefits as new fire equipment, provisions for adequate road design and repair, profit sharing, facility monitoring, design specifications and other benefits to assure communities that the facility will be built and operated in a manner that will protect the health, safety, economic, and environmental resources of the affected communities. The legislation also includes provisions for

compensating significantly affected abutting communities.

Negotiation of siting agreements will reduce local opposition to proposed facilities because communities are not simply required to say "yes" or "no" to a proposed facility. Instead, communities may respond to a proposal including both the facility and a package of incentives and compensation that offsets the local costs of the facility. This package is negotiated directly in response to the community's particular concerns (i.e. traffic flows, ground water monitoring, compensation payments, etc.). These negotiations should expedite the approval and construction of an environmentally sound hazardous waste processing and disposal facilities.

If these negotiations become deadlocked, the Council may submit unresolved issues to arbitration. Through the arbitration process communities and the developer will be presented with a siting agreement, including compensation, which is deemed fair to both parties by the neutral arbitrators.

I. Defining the Problem

The improper disposal of hazardous waste has become a critical threat to the health and safety of the Commonwealth: it has contaminated 26 public water supplies and several hundred land sites, and estimated cost for clean-up exceeds \$25 million. To remove this threat, new regulations require many industries to adopt more complex and expensive waste processing and disposal procedures -- incineration, detoxification, solidification, "contained" landfilling -- and state authorities are accelerating criminal indictments of violators.

Massachusetts now has extremely limited capacity to process its own hazardous wastes, forcing many of Massachusetts' industries to ship waste to distant, out-of-state facilities.

Clearly, strict regulations and their rigorous enforcement cannot stop illegal disposal unless we provide accessible, acceptable processing facilities. Without such facilities, we leave industry little choice but to dispose of wastes illegally, to pay exorbitant transporting cost to out-of-state facilities, or to leave the Commonwealth. Without such facilities, we continue to threaten the public's health and safety, and damage the environment, through illegal dumping of hazardous waste.

No effort to site such facilities in New England has succeeded, foreshadowing a crisis. To prevent such a crisis -- affecting both human and economic health -- the Special Commission on Hazardous Waste has carefully analyzed the current obstacles to the successful siting of hazardous waste facilities and recommends specific procedures that it believes will overcome these obstacles as quickly and effectively as possible.

Chapter 704 of the Acts of 1979 created the Special Commission on Hazardous Wastes to make recommendations to the Great and General Court on the siting of hazardous waste treatment and disposal facilities. According to Chapter 704, the major focus of the Commission work is:

- a) "to investigate alternative procedures to be utilized by the authorities in granting local and state approval of sites for hazardous waste facilities."
- b) "to investigate policies for creating a positive economic climate for the siting of hazardous waste disposal, transfer station and reclamation facilities."
- c) "to investigate the development of guidelines and criteria for the siting of disposal, transfer station and reclamation facilities."

II. Findings:

A. Economically viable technologies exist for safe and environmentally sound processing and disposal of hazardous wastes.

Expert testimony by the Department of Environmental Management, the National Solid Waste Management Association, the New England Regional Commission, and others emphasized that we can safely and economically process hazardous waste to, at least significantly, reduce their danger. These processes include materials recovery, recycling, or waste exchange, transforming waste into useful resources; physical and/or chemical treatment (including incineration) to de-toxify and neutralize toxic organic wastes, and in some cases make them harmless; and, as a last resort, "contained landfills" for less toxic sludges and treated residuals from other processes. A hazardous waste facility need not pose any greater risk than conventional industries operating in compliance with environmental regulations.

B. All citizens of the Commonwealth benefit in some way from the many industrial activities which, unfortunately, produce hazardous wastes as a result of normal operations.

Hazardous wastes are created by a variety of sources including: government, schools, hospitals, research labs, and such industries as electronics, plastics, plating, chemicals, textiles, and leather products. We must accept responsibility for the safe disposal of these hazardous wastes, or suffer the consequences of a disrupted economy, and the continued contamination of our water and land due to the illegal disposal of hazardous wastes. In the long run, we expect industrial processes to change, resulting in the production of fewer hazardous wastes. But industry and consumers will need disposal capacity for the foreseeable future.

C. Massachusetts currently has a serious lack of capacity for safely processing the hazardous wastes we produce, making us dependent on distant facilities which are quickly reaching capacity.

It has been estimated that only about 8% of Massachusetts' hazardous waste can now be properly disposed of within the state. Large generators indicated that they recycle, reclaim and reprocess much waste on site, then send the remainder to New York, New Jersey, and Illinois for reprocessing. But New York facilities are nearing capacity, so Massachusetts generators have begun searching for facilities as far away as Alabama. However, 80% of Massachusetts hazardous waste is generated by small and moderately-sized businesses, many of which lack on-site treatment facilities, personnel to spend long hours searching for distant facilities, or revenue for long transports. Currently, transportation costs equal disposal costs at about 600 miles: it costs approximately \$1500 to haul 5000 gallon truck from eastern Massachusetts to the nearest New York facility. As transportation costs increase, nearby facilities will become more essential to prevent contamination and economic disruption and stagnation.

D. Private developers are eager to build hazardous waste processing and disposal facilities.

There is a significant market for several different types of hazardous waste processing facilities in Massachusetts. Private developers have demonstrated the willingness, financial capacity, and market and management skills necessary to profitably build and operate hazardous waste facilities in a manner that protects the public's health and safety and that provides a very needed service to the Commonwealth's industries and other institutions. Private developers perceive local opposition as their major obstacle to successful

siting, and desire state assistance in responding constructively to community concerns.

E. Local opposition is the major obstacle to siting hazardous waste facilities.

Local opposition is almost inevitable, regardless of a proposed facility's location, type of processing, or expected benefits to society at large -- everyone agrees that we need these facilities, "but not in my backyard". People perceive themselves as being made much worse off by the nearby location of a hazardous waste facility. This perception arises from the belief that a facility may impose costs on its neighbors i.e. reduced property values, loss of aesthetics, inconvenience, and risks, but may provide very few benefits. This perception also arises from an awareness that past activities of industry and government have not adequately protected public health and safety, leading to public mistrust. Events like those at Love Canal and in Woburn illustrate our legacy of past improper practices, and have strongly biased the public against the siting of environmentally sound hazardous waste disposal facilities. These perceptions motivate people of all political, educational, and economic backgrounds to vigorously oppose the construction of hazardous waste facilities.

F. Opponents effectively use many tactics -- both legal and extra-legal -- to stop or seriously delay the construction and operation of necessary facilities.

Those disgruntled over proposed facilities typically have two choices under existing practice. They may either accept the facility as proposed, or try to stop its construction. Given such a choice, those perceiving dangers and costs often, and quite rationally, choose opposition, which takes many forms, i.e. legal challenges of licenses, permits, and environmental review procedures; delays of local permits;

public demonstrations; and physically obstructing access even to already approved, constructed facilities. There is no state power great enough to force people to accept facilities which they strongly oppose. Community opposition can stop or significantly delay almost any project, regardless of state override of local permits or the characteristics of the facility. Even efforts to construct on federal property have been thwarted.

G. Public conflict can best be reduced through the use of negotiation and compensation.

Public conflict over the other large facilities, such as power plants, dams, etc., have been reduced or resolved by developers and communities negotiating legally binding compensation agreements. The provisions of these agreements addresses the community's concerns and have included a variety of services and benefits: environmental monitoring programs, monetary compensation payments, environmental trust funds, fish breeding sites, additional public facilities and equipment, and other special benefits. They also have included special conditions for construction and operation of facilities such as re-routing traffic flow, altered water use, altered construction schedules, and changes in the proposed facilities, such as additional pollution control devices and different water intake systems. Such agreements, in conjunction with state and local licensing procedures can assure communities of their safety and can reduce their incentive to oppose the facility. Therefore, the neighbors can negotiate agreements which result in their being as well off after the facility is built as they were before, and thus reducing the incentives for opposition.

H. Interim measures are necessary to protect the public.

It is imperative to first develop siting criteria and

procedures, because they are a necessary precursor to the implementation of a viable long term siting process. However, the Commission realizes that while facilities that meet all public health and safety standards and environmental protection requirements are being sited under the process chosen, Massachusetts faces a critical need for interim solutions to ease pressures on industry and so reduce the probability of illegal or improper disposal of hazardous waste.

III. The Basic Siting Process

The Commission wanted a process that would:

(1) increase public confidence in the safe operation of hazardous waste facilities, and state and federal governments' credibility with local governments and the general public;

(2) make facilities attractive to host communities and their neighbors, thereby encouraging the siting of facilities with as few delays as possible;

(3) take advantage of the private sector's existing marketing, management, and development expertise;

(4) make the most efficient and effective use of public resources, (both state and local) presently being invested in permitting, licensing, environmental analysis, community assistance, and development.

To satisfy these objectives, the commission established more stringent state criteria for siting these facilities, to better assure the public protection of their health and safety and of their water supplies, and established a process that:

1) is monitored by a council that all interests may trust, which remains neutral to facilitate the resolution of public conflict over proposed site;

- 2) allows for responsible, reasonable local decision-making;
- 3) empowers a state agency to encourage the development of environmentally sound facilities, acting as a broker between developers, generators, and communities;
- 4) more effectively uses existing state requirements for reviewing the environmental impacts of proposed facilities;
- 5) genuinely involves communities in decision-making as early as possible and provides them ample opportunity to reasonably influence development decisions that would affect them;
- 6) strongly encourages negotiation between communities and facility developers, to resolve any disagreement and to define conditions for building and operating these facilities in a manner acceptable to communities;
- 7) provides communities sufficient resources to acquire the information and the legal and technical expertise necessary to negotiate with the developer and to make sound decisions concerning local permits;
- 8) provides communities safety guarantees and incentives for accepting proposed facilities;
- 9) provides abutting communities the opportunity to study a facility's impacts on their residents, to constructively voice their concerns, and to receive compensation for any demonstrable adverse impacts; and
- 10) more narrowly defines the scope of local permit authority to grounds that reasonably protect the health and safety of their citizens.

IV. The Proposed Legislation

To satisfy these objectives, the commission recommends adoption

of the attached legislation, which includes the following elements:

*the creation of a Hazardous Waste Facilities Site Safety Council broadly representing all those involved in and affected by the siting of hazardous waste facilities. This council would oversee the entire siting process, facilitate negotiations, and guarantee provision of assistance and information of all parties involved.

*authorization for the Department of Environmental Management to attract hazardous waste facility developers to Massachusetts and to encourage the suggestion of potential sites. It would not have the authority to "site facilities" or to override local decisions.

*a Notice of Intent (NOI) which a developer submits to the state, community and site owner describing the facility, the wastes to be processed, the siting process, the types of assistance available to communities, compensation and other benefits which might be negotiated with the host community. This starts the siting process, involves the communities from the very beginning, and publicizes the availability of compensation.

*a widely publicized briefing session, giving all communities and interested individuals opportunity to question state officials and the developer concerning the proposed facility, the siting process to be followed and benefits and protection afforded host and abutting communities.

*technical assistance grants provided by the council to host and abutting communities to provide them with the resources (legal, technical, or otherwise) necessary for full participation in the siting process.

*a local assessment committee (LAC) in each host community to use technical assistance grants to study the proposed

facility, acquire additional expertise, and negotiate a siting agreement with developers.

*a project impact report that delineates the environmental and socio-economic impacts of the facility. It represents an expansion and strengthening of the existing environmental review process required by state law and will, it is hoped, form the basis of negotiations between the developer and the community.

*a siting agreement between a host community's assessment committee and the developer, establishing the conditions under which the facility will be built; including construction, operation, and monitoring procedures, services provided to the developer by the community, and compensation services or other benefits provided by the developer to the community.

*local permits of narrowly defined scope, allowing reasonable local control over facility siting.

*the creation of an arbitration board if negotiations become deadlocked. It consists of two members nominated by the assessment committee and the developer, respectively, and one additional member agreeable to both. This board would establish a binding settlement that conforms, as closely as possible, to the final positions of both parties.

*time: The siting process runs concurrently with existing state permits, especially the environmental review process, and thus adds only 165 days to existing procedures. The maximum estimated time for acquiring all approvals is 670 days, approximately half of which is due to the existing environmental review procedures.

V. RECOMMENDATIONS

The Commission believes that the process described in the attached legislation is the best for assuring that treatment and disposal facilities will be built and operated in Massachusetts as quickly as possible, sufficient to handle hazardous

waste generated by Massachusetts industry. The Commission strongly urges prompt enactment of the legislation establishing this process.

We further recommend that the Special Commission on Hazardous Waste be revived and continued to the first Wednesday in December, 1980, to study, develop, and recommend various interim strategies to reduce risk to the public and the economy due to the handling of hazardous wastes.

We also recommend that the Special Commission be revived to study and make recommendation to the legislature concerning any additional legislative actions necessary to assure complete and prompt compensation of anyone suffering loss due to the improper handling of hazardous waste, whether intentional or accidental. Although existing laws include liability provisions for closure and post-closure of hazardous waste facilities, we believe that this issue needs more study in order to assure the public that their present as well as future health and welfare are protected.

This legislation gives state agencies additional powers and duties which this commission believes are necessary to assure the siting of hazardous waste facilities as quickly as possible, in order to protect the public's health and safety. The proper implementation of these new responsibilities, as well as hazardous waste enforcement duties specified in previous legislation, is critical to assure the proper management of hazardous waste in the commonwealth.

These procedures require more of existing executive offices, and this new Council would help assure the smooth and successful operation of the entire process. We strongly urge the Great and General Court to provide these state agencies with sufficient resources to properly and

in a timely manner implement these procedures, and thus help assure the protection of the commonwealth.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT TO ENCOURAGE AND EXPEDITE THE DEVELOPMENT OF HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES TO PROTECT THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT OF THE COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would tend to defeat
2 its purpose which is, in part, to encourage and expedite the process
3 of development of hazardous waste treatment and disposal facilities
4 which provide adequate safeguards to protect the public
5 health, safety, and environment of the commonwealth through
6 cooperative arrangements between developers, state agencies, and
7 local officials, and to provide suitable incentives to cities and towns
8 to authorize the location of scientifically sound and environmentally
9 safe hazardous waste treatment and disposal facilities within
10 their communities, therefore it is hereby declared to be an emergency
11 law necessary for the immediate preservation of the public
12 health, safety, and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of Chapter 21C of the General Laws,
2 inserted by Section 2 of Chapter 704 of the Acts of 1979, is
3 hereby amended by striking out the ninth paragraph and inserting
4 in place thereof the following paragraph: -

5 The department shall require that a licensee obtain and
6 maintain in effect a contract of libability insurance, a surety
7 bond or other evidence of financial responsibility in favor
8 of the commonwealth sufficient to assure financial responsi-

9 abilities in the event of damages resulting from accidents,
 10 negligence, misconduct, or malfunctioning in the construction,
 11 maintenance and operation of the facility, or from any other
 12 circumstances reasonably foreseeable occurring during or
 13 after construction or in the course of the maintenance and
 14 operation of the facilities.

15 Section 2. Section 7 of Chapter 111 of the General Laws,
 16 enacted by Section 2 of Chapter 704 of the Acts of 1979,
 17 is hereby amended by striking out the second and third
 18 sentences of the first paragraph, and the second and third
 19 paragraphs, and inserting in place thereof the following
 20 paragraphs:-

21 The Department shall grant a license to construct,
 22 construct and operate a facility or a portion of a construction
 23 that said construction will involve, or will involve, the use
 24 of hazardous waste, if the construction of the facility
 25 does not result in the emission of hazardous waste or
 26 odors. In making its determination, the Department
 27 shall consider, but not be limited to, the following
 28 information which the applicant for a license shall submit
 29 in such form and manner as the department shall prescribe and
 30 require: detailed engineering plans and specifications; a
 31 description of maintenance and operating procedures; a
 32 description of the applicant's qualifications and experience
 33 in constructing, managing, and operating a facility; a plan
 34 for closure and post closure care of the facility and site;
 35 a statement of the applicant's financial condition; a state-
 36 ment of the amount and types of waste to be received at the
 37 facility; the results of chemical analysis of the surface and

26 groundwaters in the area of the site's locus; and a hydrogeo-
27 logical study of the site area if the department has sufficient
28 reason to believe that the potentialities exist for ground-
29 water contamination. The department may also consider, and the
30 applicant shall be required to submit, such other information
31 as the department finds to be relevant and useful in making
32 its determination. The department shall, where appropriate
33 in making its determination, further consider such factors
34 including, but not limited to, the following factors: topo-
35 graphy; geological and soil conditions; climate; surface water
36 and groundwater hydrology, including water run-off and run-
37 on characteristics, wetlands and flooding conditions; drinking
38 water supplies; and compliance with applicable statutes, re-
39 gulations, and judicial decisions regarding the protection of
40 air, water and land resources. Nothing in this section
41 shall be construed to deny or limit the right of the depart-
42 ment through any lawful means to obtain and use such other
43 information which it deems necessary to assist it in making
44 its determination.

45 The department may issue a license subject to such terms,
46 restrictions, conditions and requirements as it determines to
47 be necessary to comply with the provisions of this chapter.
48 No facilities shall be constructed, maintained or operated
49 except pursuant to the terms, restrictions, conditions and
50 requirements established by the department in a license
51 duly issued hereunder and pursuant to the terms of an assign-
52 ment of a site for said facilities if said assignment is
53 required pursuant to the provisions of section one hundred and
54 fifty A of chapter one hundred and eleven.

1 Section 3. Said Section 7 of Chapter 21C of the General Laws
2 is hereby further amended by inserting after the eleventh
3 paragraph the following two paragraphs: -

Section 4 The second paragraph of Section 150A of Chapter 111 of the General Laws is hereby amended by striking out the second and third sentences of said paragraph and inserting in place thereof the following two paragraphs:

The assignment of a place as a site for a facility shall be subject to special limitation with respect to the (plant) character and nature of operation thereof as will insure that the facility imposes no significantly greater danger to the public health or public safety from fire, explosion, pollution, discharge of hazardous substances, or other consideration or operational factors than the dangers now, or likely to exist in the conduct and operation of other industrial and commercial enterprises in the commonwealth not engaged in the treatment, processing or disposal of hazardous waste, and utilizing practices that are comparable.

In establishing the significance and degree of danger, the board shall consider and evaluate such evidence as all interested persons may submit to it including, but not limited to, evidence concerning the procedures and practices proposed for the conduct and operation of a facility with the procedures and practices existing in the conduct and operation of other industrial and commercial enterprises in the commonwealth not engaged in the treatment, processing or disposal of hazardous waste which are conducted and operated in accordance with law and sound principles of modern engineering practice. The board of health shall notify the department upon receipt of an application to assign a place as a site for a facility. The department shall, upon request by the board of health, provide advice, guidance and technical assistance in reviewing the application. The department and a board of health may enter into such other cooperative

32 arrangements in addition to those herein specified for the
33 purpose of achieving a more effective and expeditious review
34 of the application.

1 Section 5. Said Section 150A of Chapter 111 of the General
2 Laws is hereby further amended by striking out the fourth,
3 fifth, and sixth paragraphs and inserting in place thereof
4 the following five paragraphs: -

5 Every decision of the board of health in assigning or
6 refusing to assign a place as a site for a facility shall be
7 in writing and shall include a statement of reasons and the
8 facts relied upon by the board in reaching its decision.

9 Any person aggrieved by the action of a board of health
10 in refusing to assign a place as a site for a facility may,
11 within thirty days of the publication of notice of said board
12 of health's decision, appeal to the superior court, which may
13 affirm said decision of the board of health, remand the
14 matter for further proceedings before the board of health,
15 set aside or modify said decision of the board of health, or
16 order the board of health to take any action unlawfully with-
17 held or unreasonably delayed if the court determines that
18 the substantial rights of any party may have been violated
19 because said decision of the board of health violated consti-
20 tutional provisions or was in excess of the statutory authority

21 No landfill for the treatment or disposal of hazardous
22 waste shall be operated in such a manner as to cause discharge
23 of hazardous waste into surface waters or groundwaters which
24 the department or the water resources commission has determined
25 are presently used, or may reasonably be expected to be used
26 in the future, as sources for the supply of drinking water.

27 Hazardous waste shall be disposed of in a landfill only
28 (a) after said hazardous waste has been given all feasible

29 treatment as directed by the department pursuant to rules,
30 regulations, procedures and standards duly prescribed including,
31 but not limited to, the requirement of treatment at the place
32 of generation when determined to be appropriate by the depart-
33 ment and (b) where the department finds that said hazardous
34 waste cannot be feasibly recycled, destroyed, or disposed
35 of by some other means approved by the department pursuant
36 to its rules, regulations, procedures or standards.

37 and jurisdiction of the board of health or was based upon an error of
38 law or was made upon unlawful procedure or was unsupported by substantial
39 evidence, or was arbitrary, capricious, or an abuse of discretion, or
40 otherwise not in accordance with law. In making its judgment, the court
41 shall give due weight to the experience, technical competence, and special-
42 ized knowledge of the board of health, as well as to the discretionary
43 authority conferred upon it by this chapter.

44 Any person aggrieved by the action of a board of health in assigning
45 a place as a site for a facility may, within thirty days of the publica-
46 tion of notice of such assignment, appeal to the department from the
47 assignment of the board of health. Upon such appeal or upon the depart-
48 ment's own initiative, the department may, after due notice and public
49 hearing, rescind or suspend such assignment or modify the same by the
50 imposition or amendment of terms, restrictions, conditions and require-
51 ments.

52 Upon determination that the maintenance and operation of a facility
53 has resulted in a significant danger to public health or is not in
54 compliance with the terms, restrictions, conditions and requirements
55 established for its maintenance and operation in an assignment made
56 pursuant to the provisions of this section, said assignment may be re-
57 scinded or suspended or may be modified through the imposition or amend-
58 ment of terms, restrictions, conditions and requirements at any time
59 after due notice and a public hearing by the board of health where such

60 facility is located, upon its own initiative or upon complaint by any
61 person aggrieved by such assignment, or by the department upon its own
62 initiative or upon complaint by any person aggrieved by said assignment.

63 Every such rescission, suspension or modification shall be
64 in writing and shall include a statement of reasons and the
65 facts relied upon by the board of health or the department
66 in taking such action.

67 Any person aggrieved by the action of the board of
68 health or the department in rescinding, suspending or
69 modifying an assignment may, within thirty days of publication
70 of notice or such rescission, suspension or modification of
71 said assignment, appeal to the superior court, which may
72 affirm said rescission, suspension or modification, remand
73 the matter for further proceedings, set aside or modify
74 said rescission, suspension or modification, order any action
75 unlawfully held or unreasonably delayed if the court determines
76 that the substantial rights of any party may have been violated
77 because said rescission, suspension or modification violated
78 constitutional provisions or was in excess of statutory
79 authority and jurisdiction or was based upon an error of
80 law or was made upon unlawful procedure or was unsupported by
81 substantial evidence or was arbitrary, capricious or an abuse
82 of discretion, or otherwise not in accordance with law.

1 Section 6. Section 9 of Chapter 40A of the General Laws shall
2 be amended by adding the following paragraph:

3 A hazardous waste facility as defined in section two
4 of chapter twenty-one D shall be permitted to be constructed as
5 of right on any locus presently zoned for industrial use
6 pursuant to the ordinances and by-laws of any city or town
7 provided that all permits and licenses required by law have
8 been issued to the developer

9 and a siting agreement has been established pursuant to
10 sections twelve and thirteen of chapter twenty-one D.
11 On all other locuses not presently zoned for industrial
12 use, pursuant to the ordinances and by-laws of any city
13 or town, a special permit may be granted for a hazardous
14 waste facility as defined in section two of chapter twenty-
15 one D by the special permit granting authority of said
16 city or town pending the granting of all permits and
17 licenses required by law and the establishing of a siting
18 agreement pursuant to sections twelve and thirteen of said
19 chapter twenty-one D. Any change in the zoning ordinance
20 or by-laws of any city or town adopted after the effective
21 date of this act, shall not operate to affect adversely the
22 availability of land for use in the construction of a
23 hazardous waste facility as defined in section two of
24 chapter twenty-one D in area, restrictions, or conditions.

1 Section 7. Section 19 of Chapter 16 of the General Laws
2 is hereby amended by adding the following sentence:

3 The department of environmental management shall not
4 exercise its eminent domain authority as authorized herein
5 for the acquisition of sites for hazardous waste treatment,
6 processing or disposal until all permits, licenses and
7 approvals of the city or town wherein the site lies have
8 been granted, a siting agreement has been established
9 pursuant to the provisions of sections twelve and
10 thirteen of chapter twenty-one D, and the approval
11 of said exercise of eminent domain authority has been
12 obtained by a majority vote of the city council, board
13 of aldermen, or board of selectmen of said city or town.

1 Section 8. Chapter 21C of the General Laws is hereby
2 amended by adding the following section:

3 Section 13. It is hereby declared that the provisions
4 of this act are severable, and if any provision of this
5 act shall be declared unconstitutional by the valid
6 judgement or decree of any court of competent jurisdiction,
7 such unconstitutionality shall not affect any of the
8 remaining provisions of this act.

1 Section 9. The General Laws are hereby amended by
2 inserting after Chapter 21C the following Chapter: -

3 Chapter 21D

4 MASSACHUSETTS HAZARDOUS WASTE

5 FACILITY SITING ACT

6 Section 1. This chapter shall be known and may be cited
7 as the "Massachusetts Hazardous Waste Facility Siting
8 Act."

9 Section 2. Unless the context clearly indicates other-
10 wise, when used in this chapter, the following words
11 and phrases shall have the following meanings:

12 "Abutting community", a city or town contiguous to or
13 touching upon any land of the host community.

14 "Chief Executive Officer", the city manager in any city
15 having a city manager, the mayor in any other city;
16 the town manager in any town having a town manager,
17 the chairman of the board of selectmen in any other town.

18 "Commissioner," the commissioner of the department
19 of environmental management.

20 "Committee", the local assessment committee.

21 "Council", the hazardous waste facility site safety council.

22 "Compensation", any money, thing of value or economic
23 benefit conferred by the developer on any city, town, or per-
24 son under the terms and conditions specified in the siting
25 agreement established by sections twelve and thirteen of
26 chapter twenty-one D.

27 "Department", the department of environmental management.
28 "Developer", any person proposing to construct, maintain,
29 or operate a hazardous waste facility in any city or
30 town of the commonwealth.
31 "Disposal", the discharge, deposit, injection, dumping,
32 spilling, leaking, incineration or placing of any hazardous
33 waste into or on any land or water so that such hazardous
34 waste or any constituent thereof may enter the environ-
35 ment or be emitted into the air or discharged into any
36 waters, including ground waters.
37 "Facility", a site or works for the storage, treatment,
38 dewatering, refining, incinerating, reclamation, stabili-
39 zation, solidification, disposal or other processes where
40 hazardous wastes can be stored, treated or disposed of;
41 however, not including a municipal or industrial waste
42 water treatment facility if permitted under section forty-
43 three of chapter twenty-one.
44 "Hazardous waste", a waste, or combination of wastes,
45 which because of its quantity, concentration, or physical,
46 chemical or infectious characteristics may cause, or
47 significantly contribute to an increase in mortality or
48 an increase in serious irreversible, or incapacitating
49 reversible illness or pose a substantial present or poten-
50 tial hazard to human health, safety or welfare or to
51 the environment when improperly treated, stored, transported,
52 used or disposed of, or otherwise managed, however not
53 to include solid or dissolved material in domestic sewage,
54 or solid or dissolved materials in irrigation
55 return flows or industrial discharges which are point
56 sources subject to permits under section 402 of the
57 Federal Water Pollution Control Act of 1967 as amended,

58 or source, special nuclear, or byproduct material as
59 defined by the Atomic Energy Acts of 1954.

60 "Hazardous waste management", the systematic control of
61 the collection, source separation, storage, transpor-
62 tation, processing, treatment, recovery and disposal of
63 hazardous wastes.

64 "Host community", the city or town in which a developer
65 proposes to construct, maintain and operate a hazardous
66 waste facility.

67 "Person", any agency or political subdivision of the
68 federal government or the commonwealth, any state, public
69 or private corporation or authority, individual, trust,
70 firm, joint stock company, partnership, association, or
71 other entity, and any officer, employee or agent of said
72 person, and any group of said persons.

73 "Treatment", any method, technique or process, including
74 neutralization, incineration, stabilization or solidifi-
75 cation, designed to change the physical, chemical or
76 biological character or composition of any hazardous waste
77 so as to neutralize such waste or so as to render such
78 waste less hazardous, non-hazardous, safer to transport,
79 amenable to storage, or reduced in volume, except such
80 method or technique as may be included as an integral
81 part of a manufacturing process at the point of generation.

82 Section 3. The department of environmental management
83 shall have the following powers and duties:

84 (1) to prepare and issue on or about the first of
85 February of each year a statewide environmental impact
86 report, after first providing the council an adequate
87 opportunity to review and comment on the contents of said
88 report prior to its final adoption by the department .

89 Said statewide environmental impact report shall describe
90 and evaluate the hazardous waste management situation
91 existing in the commonwealth, together with such feasible
92 alternative solutions as may be available for the treat-
93 ment, processing and disposal of hazardous waste, which
94 report shall include, but not be limited to information
95 concerning:

- 96 (a) the existing sources of hazardous waste;
- 97 (b) the types of technologies available for
98 the treatment, processing and disposal of
99 hazardous waste;
- 100 (c) the impacts, both favorable and adverse,
101 resulting from the use of each type of tech-
102 nology;
- 103 (d) actions which might be taken to
104 avoid dangers, minimize risks, or remedy
105 unavoidable consequences;
- 106 (e) the kinds of benefits and protective
107 mechanisms which may be made available to
108 host and abutting communities; and
- 109 (f) the existing rules, regulations, pro-
110 cedures and standards which have been estab-
111 lished to protect the public health, the
112 public safety, and the environment; and
- 113 (g) the sources and types of hazardous waste
114 generated in the commonwealth, the adequacy
115 of existing facilities for the treatment
116 processing and disposal of said hazardous waste,
117 and the additional facility capacity needed
118 in order to eliminate the shortfall in capacity
119 if any, that may exist;

(3) to give due notice to the public, and to conduct
public hearings pursuant to the provisions of section
eight of this chapter;

(4) to solicit proposals for the construction, main-
tenance and operation of a hazardous waste facility designed
to treat, process, or dispose of such hazardous waste
shortfalls. The results have been indicative of the state-
wide environmental impact report, to consider all such
proposals, and environmentally safe and technologically
sound, and to report the results of its activities to the
Council on Environment and Energy about the first of January
and the first of July of each year;

(4) to disseminate information widely, appropriate
the recommendations in connection with other state and
federal, state, federal and commissions, on the
treatment, processing and disposal of hazardous waste
the impact on the economy of the commonwealth, the types
of technology available, and the social and economic
benefits and potential dangers resulting from the use
of each type of technology;

(5) to publicize widely throughout the commonwealth
all proposals for the construction, maintenance and
operation of hazardous waste facilities in order to inform
the public and to encourage the development of suggestions
for sites; and

(6) to accept any gifts or grants of money or
property, whether real or personal, from any source,
private or public, including, but not limited to, the
United States of America or its agencies, in order to promote
the purposes of this chapter.

In preparing the statewide environmental impact
report required annually by this section, the department

152 may revise and update those portions of its report where
153 said revision and updating are all that is needed to
154 comply with the provisions of this section.

155 The department shall adopt such rules, regulations,
156 procedures and standards as may be necessary to carry out
157 its powers and to perform its duties pursuant to the
158 provisions of this chapter. Said rules, regulations,
159 procedures and standards shall be developed by the de-
160 partment after appropriate consultation and review by
161 interested and affected persons and agencies as determined
162 by the department including, but not limited to, the
163 hazardous waste facility site safety council, the depart-
164 ment of environmental quality engineering, the department
165 of public health, and city and town officials, including
166 city and town public health officers.

167 Section 4. There is hereby established the hazardous waste
168 facility site safety council whose powers and duties shall
169 be:

170 (1) to observe the conduct and operation of the
171 hazardous waste facility siting process established by
172 this chapter and to advise all participants in the said
173 process as to methods and actions designed to provide
174 for the more effective, efficient and successful imple-
175 mentation of said process;

176 (2) to review the rules, regulations, procedures,
177 and standards proposed to be adopted by the department
178 as they relate to the hazardous waste facility siting
179 process prior to their adoption and to recommend to the
180 department whatever changes in said rules, regulations,
181 procedures or standards the council determines shall
182 better serve to carry out the purposes and implement
183 the provisions of this chapter;

184 (3) to review and comment upon the statewide en-
185 vironmental impact report prior to its final adoption
186 by the department including, but not limited to, the
187 capacity shortfall portion of said report, and to review
188 and comment upon all other documents, reports or forms
189 prepared by the Department for public distribution prior to

190 distribution to the public of said documents, reports or forms.

191 (4) to administer, manage and coordinate the social
192 and economic impact appendix of the preliminary project
193 impact report in cooperation with the secretary who is to
194 for some time administering, managing and coordinating
195 the environmental impact report portion of the same and
196 identify project impact report:

197 (5) to make financial assistance grants to cities
198 towns and appropriate consultation with the state
199 and local communities and development;

200 (6) to review all proposals for the construction
201 and operation of hazardous waste facilities on proposed
202 or suggested sites and, after appropriate consultation
203 with the department of environmental quality engineering,
204 to reject those proposals which the council finds to be
205 unacceptable for the hazardous waste facility siting process
206 established by this chapter;

207 (7) to establish the compensation to be paid by
208 the developer to abutting communities pursuant to the
209 provisions of section fourteen of this chapter;

210 (8) to undertake measures and actions designed to
211 encourage and facilitate negotiations among the developer,
212 the host community, abutting communities, and any other
213 persons interested in proposals for the construction,
214 maintenance and operation of hazardous waste facilities on
215 particular proposed or suggested sites;

216 (9) to determine if an impasse exists between the
217 developer and the host community in negotiations over a
218 siting agreement which requires submission of the matter
219 to arbitration pursuant to the provisions of section fifteen
220 of this chapter;

221 (10) to encourage cooperation between a host community
222 and abutting communities in negotiations with the developer
223 over compensation; and

224 (11) to adopt such rules, regulations, procedures
225 and standards as may be necessary for carrying out its
226 powers and performing its duties pursuant to the pro-
227 visions of this chapter.

228 The council, which shall consist of nineteen members,
229 shall be comprised of the following members:

230 (1) the secretary of environmental affairs or
231 his designee;

232 (2) the secretary of economic affairs or his
233 designee;

234 (3) the secretary of public safety or his designee;

235 (4) the secretary of communities and development or
236 his designee;

237 (5) the commissioner of environmental quality
238 engineering or his designee;

239 (6) the commissioner of environmental management,
240 or his designee;

241 (7) the commissioner of public health or his
242 designee; and

243 (8) twelve members appointed by the governor

244 (a) one of whom shall be a representative of
245 the Massachusetts Municipal Association,

246 (b) one of whom shall be a representative of
247 the Massachusetts Health Officers Association;

- 248 (c) one of whom shall be a representative of
249 local boards of health;
250 (d) one of whom shall be a representative
251 of the Associated Industries of Massachusetts;
252 (e) one of whom shall be a professional
253 hydrogeologist;
254 (f) one of whom shall be a professional
255 chemical engineer;
256 (g) one of whom shall be a representative
257 of the public knowledgeable in environmental
258 affairs; and
259 (h) five of whom shall be a representative
260 of the public.

261 When the council meets to discuss, investigate or
262 determine that an impasse exists in the negotiations of a
263 siting agreement between the local assessment committee of
264 a host community and the developer, the committee shall
265 appoint two residents of the host community to serve
266 on the council for the purpose of participating in and
267 voting upon the determination that said impasse exists and
268 the framing of the issues in dispute between the parties
269 pursuant to section fifteen of this chapter.

270 No member appointed by the governor shall have a
271 financial interest in any of the decisions, actions or
272 reports of the council. Such financial interest shall in-
273 clude, but not be limited to, service as a consultant to
274 any person specializing in the treatment, processing or
275 disposal of hazardous waste, or as an attorney of a
276 party with a direct financial interest in the treatment,
277 processing or disposal of hazardous waste.

278 The members of the council appointed by the governor
279 shall be appointed for a term of five years, except that

280 the representatives of the Massachusetts Municipal Asso-
281 ciation, the Associated Industries of Massachusetts, and
282 two representatives of the public initially appointed shall
283 be appointed for terms of three years; the representative
284 of the Massachusetts Health Officers Association, the pro-
285 fessional hydrogeologist, the representative of the public
286 knowledgeable in environmental affairs, and one representa-
287 tive of the public initially appointed shall be appointed
288 for terms of four years; and the representative of the local
289 boards of health, the professional chemical engineer, and
290 two representatives of the public initially appointed shall
291 be appointed for terms of five years. No member appointed
292 by the governor shall be eligible to serve for more than
293 two terms. Persons appointed by the governor to fill
294 vacancies shall serve for the unexpired term of said
295 vacancy.

296 Each member of the council appointed by the governor
297 shall receive, subject to appropriation, fifty dollars for
298 each day or part thereof for his services and shall also
299 receive all reasonable expenses actually and necessarily
300 incurred in the performance of his official duties.

301 The governor shall appoint, from among the members he
302 has appointed to the council, a chairman to serve at his
303 pleasure.

304 In addition to the powers and duties of the council
305 established by this section, the council shall appoint a full-
306 time executive secretary to serve at its pleasure. The ap-
307 pointment and removal of said executive secretary shall not
308 be subject to the provisions of chapter thirty-one or section
309 nine A of chapter thirty. The executive secretary shall
310 receive such salary as may be determined by law.

311 The council may receive and expend such funds as are ap-
312 propriated or as may be made available to it from the funds
313 of other agencies. The executive secretary may employ such
314 staff and consultants as are required to assist the council
315 in the performance of its functions and duties, upon approval
316 of a majority of the council, subject to appropriations
317 therefor.

318 The council shall have the power and duty to establish,
319 after due notice and a public hearing, a schedule of reason-
320 able fees to be imposed upon the developer in the implemen-
321 tation of the provisions of this chapter. In establishing
322 said schedule of reasonable fees, the council shall consider
323 the actual costs incurred by the commonwealth in the conduct
324 and operation of the hazardous waste facility siting process
325 as established by this chapter.

326 Section 5. Not more than thirty days after the receipt of
327 a notice of intent to construct, maintain and operate a
328 hazardous waste facility on a site in a city or town, or
329 notification by the department that this community is a
330 host community in the final list of suggested sites estab-
331 lished by the council pursuant to section seven of this chapter,
332 the chief executive officer of said city or town shall take
333 appropriate action to establish a local assessment committee.
334 Said committee shall be comprised of (1) the chief executive
335 officer, who shall serve as its chairman, (2) the chairman
336 of the local Board of health or his designee, (3) the chairman
337 of the local conservation commission or his designee, (4) the
338 chairman of the local planning board or his designee, (6) the
339 chief of the fire department or his designee and (7) three
340 residents of said city or town appointed by a majority vote
341 of the aforementioned city or town officials or their desig-
342 nees. A majority of the members shall constitute a quorum

343 for the purpose of conducting all business. The chairman
344 shall preside over meetings of the committee. All actions
345 and decisions of the committee pursuant to this chapter
346 shall be made by majority vote. Not more than thirty days
347 after the receipt of a notice of intent to construct, main-
348 tain and operate a hazardous waste facility on a site in said
349 city or town, or notification by the department that this
350 community is a host community on the final list of suggested
351 sites established by the council pursuant to section seven
352 of this chapter, the chief executive officer thereof may
353 substitute for the membership of the committee established
354 by this section whatever alternative membership he deems more
355 appropriate to represent the best interests of his city or
356 town, which may include representatives of abutting communities.

357 The chief executive officer of said city or town shall
358 submit to the council, not more than thirty days after the
359 receipt of a notice of intent to construct, maintain and
360 operate a hazardous waste facility on a site in said city
361 or town, or notification by the department that this community
362 is a host community on the final list of suggested sites
363 established by the council pursuant to section seven of this
364 chapter, the names and addresses of all the members of the
365 local assessment committee. If the chief executive officer
366 has submitted alternative membership, said alternative
367 membership shall be deemed to be approved and shall exercise
368 all powers and perform all duties imposed upon a local assess-
369 sment committee pursuant to the provisions of this chapter,
370 unless the council informs the chief executive officer of
371 said city or town of its disapproval within thirty days of
372 its receipt of said alternative membership, in which event
373 the membership established by the provisions of this section
374 shall constitute the local assessment committee for said
375 city or town.

376 If the chief executive officer of said city or town fails
377 to take appropriate action to establish a local assessment
378 committee and to submit the names and addresses of its
379 membership to the council not later than thirty days after
380 the receipt of said notice of intent, or notification by
381 the department that this community is a host community on the
382 final list of suggested sites established by the council
383 pursuant to section seven of this chapter, the council shall
384 establish and appoint the membership of said committee.

385 The chief executive officer shall promptly report to the
386 council any changes that may occur in the members of the
387 local assessment committee.

388 A local assessment committee shall have the following
389 powers and duties:

390 (1) to represent generally the best interests of the
391 host community in all negotiations with the developers of
392 proposed facilities in said community;

393 (2) to negotiate with the developer the detailed terms,
394 provisions, and conditions of a siting agreement to protect
395 the public health, the public safety, and the environment
396 of the host community, as well as to promote the fiscal
397 welfare of said community through special benefits and compensation

398 (3) to receive and expend such technical assistance and
399 planning grants as may be made available pursuant to section
400 eleven of this chapter and such other funds as may become
401 available for such purposes from any other source,
402 public or private;

403 (4) to enter into a non-assignable contract binding
404 upon the host community, and enforceable against said host
405 community in any court of competent jurisdiction, by the
406 decision to sign a siting agreement pursuant to section
407 thirteen of this chapter;

408 (5) to cooperate wherever possible with abutting
409 communities in negotiations with the developer over com-
410 pensation for said abutting communities; and

411 (6) to adopt such rules, regulations, procedures and
412 standards as may be necessary to carry out its functions
413 and perform its duties under this chapter.

414 The provisions of sections twenty-three A and twenty-
415 three B of chapter thirty-nine shall apply to all meetings
416 of a local assessment committee except that, in addition
417 to the purposes for which executive sessions may be held
418 pursuant to section twenty-three B of chapter thirty-nine,
419 an executive session of a local assessment committee may
420 also be held for the following purpose:

421 to discuss strategy with respect to the negotiation
422 of a siting agreement or to consider the terms, conditions
423 and provisions of said siting agreement if such discussion
424 or consideration in an open meeting may have a detrimental
425 effect upon the negotiating position of the local assessment
426 committee or the establishment of the terms, conditions
427 and provisions of said siting agreement.

428 Section 6. Notwithstanding the provisions of any law
429 to the contrary, any information, record, or particular
430 part thereof, obtained by the department pursuant to the
431 provisions of this chapter, shall, upon request, be kept
432 confidential and not be considered to be a public record
433 when it is deemed by the commissioner that such information,
434 record or report relates to secret processes, methods of
435 manufacture or production, or that such information, record
436 or report, if made public, would divulge a trade secret.
437 Nothing in this section shall be construed to limit or to
438 deny the power of the department to use such information,
439 record or report as part of aggregated statistics and comp-

440 utations in its statewide environmental impact report including;
441 but not limited to, the capacity shortfall of hazardous waste
442 facilities.

443 Section 7. Every developer proposing to construct, maintain
444 and operate a hazardous waste facility shall submit a notice
445 of intent to the council, the department, the department of environmental
446 quality engineering, the chief executive officer of the host
447 community, if any, any regional planning agency of which the
448 host community, if any, is a member or in which it otherwise
449 participates, the chief executive officer of all abutting
450 communities, if any, and those persons owning or otherwise
451 exercising control over the real property of any site on
452 which the developer proposes to construct, maintain and operate
453 a hazardous waste facility. A separate notice of intent shall
454 be submitted by the developer for each site proposed for a facilit

455 The notice of intent shall include:

456 (1) a description of the type of hazardous wastes
457 the developer proposes to accept for treatment, processing
458 and disposal at the facility;

459 (2) a description of the technology and procedures
460 the developer proposes to use to treat, process, and dispose
461 of hazardous waste at the facility;

462 (3) the site, if any, proposed by the developer as
463 a possible location for the construction and operation of
464 the facility;

465 (4) a description of the present suitability of the
466 site, and of what additional measures, if any, will be required
467 to make the site suitable for the purpose of constructing,
468 maintaining and operating a facility; or in the event he
469 is not proposing a site, the requirements and characteristics
470 of a site that would be appropriate for said facility;

471 (5) preliminary specifications and architectural
472 drawings of the proposed facility;

473 (6) a copy of the most recently published statewide
474 environmental impact report issued by the department pursuant
475 to section three of this chapter; and

476 (7) any other information required to be submitted in
477 accordance with the rules, regulations, procedures and standards
478 of the department or the council.

479 In submitting a notice of intent, the developer
480 shall attach thereto such documents prepared or approved
481 by the department which describe and explain the hazardous
482 waste facility siting process as established by the pro-
483 visions of this chapter, which describe and explain the
484 types of planning and other technical assistance available
485 to the host community and to abutting communities from any
486 source, including, but not limited to, state agencies and
487 the developer, and which describe and explain the types
488 of special benefits that may be included in a negotiated
489 facility siting agreement between a local assessment committee
490 in a host community and a developer including, but not limited
491 to, direct compensation payments to the host community, safety
492 operation and monitoring programs, and future monetary in-
493 centives to the host community.

494 The council shall, within fifteen days of the receipt
495 of a completed notice of intent, and upon consultation with
496 the department of environmental quality engineering, review
497 the proposed project to determine if the proposed project
498 is feasible and deserving of state assistance. The department
499 shall publish and disseminate any determination by the council
500 that a proposed project is feasible and deserving of state
501 assistance by notifying all those who previously received
502 the notice of intent pursuant to this section and the chief

503 executive officer of every city and town in the commonwealth.
504 The department shall include its schedule of briefing sessions
505 pursuant to section eight of this chapter in such notification.
506 Section 8. The department shall conduct briefing sessions
507 for the purposes of maximizing the participation of interested
508 persons in the hazardous waste facility siting process pursuant
509 to this chapter and of more fully informing the public about
510 every proposal which the hazardous waste facility siting
511 council has determined to be feasible and deserving of state
512 assistance. The department shall establish whatever schedule
513 of briefing sessions it deems appropriate to achieve these
514 purposes, holding said sessions in such a manner, place,
515 and at such times as in its sole discretion are best calculated
516 to achieve these purposes. The department shall conduct its
517 first briefing session on a proposal within thirty days
518 after it has completed its dissemination of the determination
519 of the council that the proposed project is feasible and
520 deserving of state support pursuant to section seven of this
521 chapter. Every person attending a briefing session shall be
522 given a reasonable opportunity to discuss, comment upon, or
523 criticize all or any part of the proposal and may ask questions
524 of the developer, the department, or any other agencies rep-
525 resented at said briefing session.
526 Section 9. If the developer suggests a site in his notice
527 of intent and indicates therein his unwillingness to accept
528 suggestions for alternative sites, the council shall proceed
529 to review the proposal pursuant to section ten of this chapter.
530 If the developer indicates in his notice of intent a willingness
531 to accept suggestions for a site, whether as alternative sites
532 to a site already proposed or as initially suggested sites if
533 none has been proposed in his notice of intent, the
534 department shall for a period of fifty days after the

535 conclusion of the briefing sessions pursuant to section
536 eight of this chapter accept suggestions for sites proposed
537 and submitted by any of the following persons:

538 (1) private individuals who own, or have a substantial
539 financial interest in, the suggested site;

540 (2) the chief executive officer or the local assessment
541 committee of a host community suggesting a site within
542 said host community which is publicly owned and probably
543 available for lease or sale to the developer, or which
544 is privately owned, where reasonable grounds exist for the
545 belief that said site might be readily available for use
546 as a site for a facility;

547 (3) the developer suggesting a site either as an alternative
548 to, or in addition to the site originally proposed in his
549 notice of intent or as an initial suggestion for a site if
550 none was proposed in his notice of intent;

551 (4) any agency of the commonwealth suggesting a site
552 which is publicly owned and probably available for lease
553 or sale to the developer, or which is privately owned, where
554 reasonable grounds exist for the belief that said site might
555 be readily available for use as a site for a facility;

556 (5) the chief executive officer of any city or town
557 in the commonwealth suggesting a site in his city to town
558 which is publicly owned and probably available for lease or
559 sale to the developer, or which is privately owned, where
560 reasonable grounds exist for the belief that said site
561 might be readily available for use as a site for a
562 facility; and provided that any person or agency suggesting
563 a site has prior to such suggestions notified in writing
564 the owner or owners of record of the site and the chief
565 executive officer of the host community.

566 Any suggestion of a site may be withdrawn by the person
567 or agency making said suggestion within the fifty day period
568 permitted for the making of suggestions. If upon the
569 conclusion of the fifty day period, no sites have been suggested
570 by any person or agency, the council may extend the period
571 within which suggestions may be made for an additional thirty
572 days and the department may suggest a reasonable number of
573 sites in the host community which are publicly owned and
574 probably available for lease or sale to the developer or which
575 are privately owned, where reasonable grounds exist for the
576 belief that said sites might be readily available for use as
577 sites for a facility.

578 If, upon the conclusion of the period or periods permitted
579 for suggestions, more than three suggested sites have been
580 proposed, the council shall, upon consultation with the
581 department of environmental quality engineering, reduce
582 the number of suggested sites to three, including the developer's
583 suggested site, if any. The council shall determine, prior
584 to establishing its final list of suggested sites, whether
585 or not the owner of record desires to withdraw his real
586 property from consideration as a suggested site. If the
587 owner of record so desires, the suggested site shall
588 be withdrawn and the council shall endeavor to replace
589 said suggested site on its final list.

590 Within ten days after the end of the suggestion period,
591 the department shall notify the chief executive officers
592 of each host community and all abutting communities, the
593 members of the local assessment committee of each host
594 community, the owner or owners of record of suggested sites,
595 and newspapers, radio stations, and television stations
596 serving each host community of the final list of suggested
597 sites by distributing said list to them.

598 Section 10. The developer shall prepare a preliminary
599 project impact report to be submitted to the secretary and
600 to the council for each site under consideration. Said
601 preliminary project impact report shall consist of two
602 parts: (1) the environmental impact report required by
603 sections sixty-two to sixty-two H, inclusive of chapter
604 thirty and (2) a social economic appendix as prescribed by
605 the rules, regulations, procedures and standards adopted by
606 the council. The secretary shall continue to administer
607 and manage the environmental impact report as part of the
608 preliminary project impact report pursuant to the procedures
609 and time requirements of sections sixty-two to sixty-two H,
610 inclusive, of chapter thirty in order to determine whether
611 or not said environmental impact report complies with the
612 provisions of said sections. Insofar as possible, the council
613 shall administer and manager the social and economic
614 appendix as part of the preliminary project impact report
615 in accordance with the procedures and time requirements estab-
616 lished for an environmental impact report pursuant to
617 sections sixty-two to sixty-two H, inclusive, of chapter
618 thirty in order to determine whether or not the social
619 and economic appendix is in its judgment in compliance with
620 the rules, regulations, procedures and standards which it
621 has prescribed for said appendix. The secretary and the
622 council shall cooperate in the administration and management
623 of the preliminary project impact report, shall from time
624 to time during the review process exchange reports, comments
625 and information developed and received, and shall to the
626 maximum feasible extent endeavor to have both parts of
627 the preliminary project impact report proceed through the
628 review process at the same time pursuant to the procedures
629 and timing requirements of section sixty-two to sixty-two H,
630 inclusive, of chapter thirty.

631 The developer shall file a project notification form
632 with the secretary and the council. The council shall issue
633 public notice of the availability of such report. The project
634 notification form shall consist of an environmental noti-
635 fication form pursuant to section sixty-two A of chapter
636 thirty and such other social and economic information as
637 the council shall prescribe by its rules, regulations, pro-
638 cedures and standards.

639 The council shall limit the scope of the social
640 and economic appendix as part of the preliminary project
641 impact report. Notwithstanding the provisions of section
642 sixty-two A of chapter thirty, the council may establish
643 a specific procedure for the evaluation and review of the
644 social and economic impacts of the proposed project, whether
645 or not the secretary has designated said project as a major
646 and complicated project. The secretary shall have the
647 authority to determine in his sole discretion that a
648 proposal to construct, maintain and operate a hazardous
649 waste facility should be designated as a major and complicated
650 project requiring the establishment of a specific procedure
651 for evaluation and review of the environmental impact of
652 said project pursuant to section sixty-two A of chapter thirty.

653 Upon the establishment of a siting agreement pursuant
654 to sections twelve and thirteen of this chapter, the developer
655 shall prepare a final project impact report which shall be
656 in accordance with the provisions of the siting agreement
657 and which shall contain information, comments, and facility
658 redesign data resulting from the negotiations preceding the
659 establishment of said agreement. The council shall declare
660 that an established siting agreement is operative and is to
661 be given full force and effect only when a final project
662 impact report has been found by the secretary and the council
663 to be in compliance with all applicable provisions of law.

664 Section 11. The local assessment committee of a host
665 community and the chief executive officers of abutting
666 communities may request technical assistance grants from
667 the council. If a local assessment committee of a host
668 community or the chief executive officer of an abutting
669 community requests a technical assistance grant on or before
670 the date that the secretary has defined the scope of the
671 environmental impact report part of the preliminary project
672 impact report, the council shall act on said request within
673 thirty days after the secretary has so defined the scope
674 and shall award, subject to funds appropriated therefor,
675 such amounts as in its discretion shall be appropriate, upon
676 consultation with the executive office of communities and
677 development. All technical assistance grants awarded to
678 the chief executive officers of abutting communities and to
679 the local assessment committee of a host community which
680 has requested such a grant after the secretary has defined
681 the scope of the environmental impact report part of the
682 preliminary project impact report shall be awarded in such
683 amounts and form, subject to funds appropriated therefor,
684 as the council in its discretion shall deem to be appropriate.

685 The local assessment committee of a host community
686 and the chief executive officers of abutting communities
687 may expend these funds, and such other funds as a city or
688 town may appropriate therefor, to pay the costs incurred by
689 said communities

690 for participation in the hazardous waste facility site process
691 established by this chapter.

692 Section 12. No facility shall be constructed, maintained or
693 operated unless a siting agreement shall have been established
694 by the developer and the local assessment committee of a host
695 community pursuant to sections twelve and thirteen of this

chapter and said agreement has been declared to be operative and in full force and effect by the council. After said declaration by the council, a siting agreement shall be a non-assignable contract binding upon the developer and the host community, and enforceable against the parties in any court of competent jurisdiction.

The siting agreement shall specify the terms, conditions and provisions under which the facility shall be constructed, maintained and operated if the developer chooses to construct, maintain and operate a facility on said site, including, but not limited to the following terms, conditions and provisions:

- (1) facility construction and maintenance procedures;
- (2) operating procedures and practices, the design of the facility and its associated activities;
- (3) monitoring procedures, practices and standards necessary to assure and continue to demonstrate that the facility will be operated safely;
- (4) the services to be provided the developer by the host community;
- (5) the compensation, services, and special benefits that will be provided to the host community by the developer, and the timing and conditions of their provision;
- (6) the services and benefits to be provided to the host community by agencies of state government, and the timing and condition of their provision;
- (7) any provisions for tax prepayments or accelerated payments, or for payments in lieu of taxes;
- (8) provisions for renegotiation of any of the term, conditions of provisions of the siting agreement, or of the entire agreement;
- (9) provisions for resolving any disagreements in the construction and interpretation of the siting agreement that may arise between the parties; and

729 (10) appendices of the compensation to be paid abutting
730 communities established pursuant to the provisions of section
731 fourteen of this chapter.

732 The siting agreement may also include, but shall not be
733 limited to, the following provisions:

734 (1) provisions for direct monetary payments from the
735 developer to the host community in addition to payments for
736 taxes and special services and compensation for demonstrable
737 adverse impacts;

738 (2) provisions to assure the health, safety, comfort,
739 convenience, and social and economic security of the host
740 community and its citizens;

741 (3) provisions to assure the continuing economic viability
742 of the project; and

743 (4) provisions to assure the protection of the enviro-
744 nment and natural resources.

745 None of the terms, conditions and provisions of a siting
746 agreement shall operate to derogate in any way from the
747 requirements established by any general or special law.

748 Any financial benefits received by host communities or
749 abutting communities, other than taxes on real or personal
750 property, shall not be deducted from any amounts of state
751 assistance, reimbursements or distributions provided by
752 general and special laws or under the local aid fund estab-
753 lished by section two D of chapter twenty-nine.

754 Section 13. A siting agreement may be established (1) by
755 the signature of the chief executive officer of a host
756 community who has been directed by a majority vote of
757 the local assessment committee of said host community to
758 sign and the signature of any officer of the developer
759 expressly authorized by the developer to sign said
760 agreement, or (2) by arbitration pursuant to section
761 fifteen of this chapter.

762 All state agencies shall endeavor to assist in facilita-
763 ting negotiations between local assessment committees, the chief
764 executive officer of abutting communities, and the developer.
765 The council shall be available during such negotiations to
766 assist in the exchange of information and to encourage and faci-
767 litate access to opinions, reports, documents and other materials
768 relevant to the siting agreement including, but not limited to,
769 all public records produced as part of the hazardous waste
770 facility siting process established by this chapter.

771 Section 14. The chief executive officer of any abutting community
772 may, within sixty days of the determination by the secretary and
773 the council that a preliminary project impact report is in their
774 judgment in compliance with applicable law, petition the council
775 for the establishment of compensation to be paid by the developer
776 to the abutting community for the demonstrably adverse impacts
777 to be imposed upon said community by the construction, maintenance
778 and operation of a hazardous waste facility in a host community.
779 As a condition precedent to the filing of said petition, the
780 chief executive officer shall agree in writing on a form pre-
781 scribed by the council, and he is herewith given the authority
782 to bind his city or town to such an agreement, that his city or
783 town shall either accept the compensation to be determined by the
784 council or the compensation established by arbitration pursuant
785 to the procedures established in this section in full settlement
786 of any claims for demonstrably adverse impacts imposed by the
787 current proposed project. The chief executive officer shall
788 also agree, as an essential part of said condition precedent,
789 that he will sign an agreement with the developer accepting the
790 amount established by the council or by arbitration pursuant
791 to this section, which agreement shall be a non-assignable contract
792 binding on the abutting community and the developer, and enforceable
793 as such in any court of competent jurisdiction.

794 The council, after due notice to the developer, the local
795 assessment committee, and the chief executive officer of the
796 abutting community which has petitioned shall conduct a public
797 hearing to determine and establish the compensation to be given
798 to the abutting community by the developer. If the chief
799 executive officer of the abutting community or the developer
800 is aggrieved by the amount of compensation established by the
801 council, either party may appeal to the council to establish
802 an arbitration panel, which shall be comprised of three arbitra-
803 tors, to resolve the dispute. The council, upon such appeal, shall
804 establish said arbitration panel by appointing one arbitrator
805 selected by the chief executive officer of the abutting community,
806 one arbitrator selected by the developer, and the third an im-
807 partial arbitrator, who shall be selected by the chief execu-
808 tive officer of the abutting community and by the developer and
809 who shall act as chairman of the panel or, if the chief executive
810 officer of the abutting community and the developer agree,
811 a single impartial arbitrator acceptable to the chief executive
812 officer of the abutting community and the developer.

813 If an arbitration panel or single arbitrator has not been
814 selected within thirty days after an appeal for arbitration has
815 been filed, the council shall appoint the arbitrator or arbitra-
816 tors necessary to complete the three person panel, which shall
817 act with the same force and effect as if the panel had been
818 selected without the intervention of the council.

819 The arbitration panel by a majority vote or single arbitra-
820 tor shall within forty-five days after establishment determine
821 the amount of compensation to be paid by the developer to the
822 abutting community. The council, upon request of the arbitration
823 panel or the single arbitrator, may extend the time for the con-
824 duct of arbitration.

825 The arbitrators or arbitrator shall receive such compensa-
826 tion for each day or part thereof for his services as a majority

827 of the council, subject to appropriation, shall establish. He
828 shall also receive, subject to appropriation, all reasonable
829 expenses actually and necessarily incurred in the performance
830 of his official duties.

831 The developer shall agree in writing on a form prescribed
832 by the council that, as a condition precedent to the establish-
833 ment of a siting agreement, he shall accept the amount established
834 by the council or by arbitration pursuant to this section as the
835 amount of compensation he shall pay to the abutting community.
836 The developer shall also agree, as an essential part of said
837 condition precedent, that he will expressly authorize one of his
838 officers to sign an agreement with the chief executive officer
839 of the abutting community, which agreement shall be a non-assign-
840 able contract binding on the developer and the abutting community,
841 and enforceable as such in any court of competent jurisdiction.

842 The provisions of chapter two hundred and fifty-one shall
843 govern the conduct of arbitration proceedings pursuant to this
844 section, including the provisions of said chapter for judicial
845 review of an arbitration award.

846 Section 15. If sixty days after the secretary and the
847 council determine that the preliminary project impact
848 report is in compliance with applicable law, the depart-
849 ment, the developer or the local assessment committee of
850 the host community informs the council that an impasse
851 in the negotiations of a siting agreement exists, the
852 council, upon investigation, may determine that such an
853 impasse exists and may proceed to frame the issues in
854 dispute between the local assessment committee and the
855 developer for submission to final and binding arbitra-
856 tion. Upon request of both the developer and the host
857 community, the council may postpone the making of its
858 determination that an impasse exists and that the issues
859 in dispute should be resolved by final and binding arbi-

860 tration for such a reasonable period of time as the
861 council in its sole discretion shall determine to be ap-
862 propriate. Upon the making of the determination that an
863 impasse in the negotiation of a siting agreement exists,
864 the council shall establish either an arbitration panel
865 which shall be comprised of three arbitrators, one select-
866 ed by the developer, one selected by the local assessment
867 committee of the host community, and a third, an impartial
868 arbitrator who shall act as chairman of the panel, who shall
869 be selected by the developer and the local assessment
870 committee of the host community, or, if the developer
871 and the local assessment committee of the host community can
872 agree, a single impartial arbitrator acceptable to the developer
873 and local assessment committee of the host community.

874 If an arbitration panel or single impartial arbitra-
875 tor has not been selected within thirty days after the
876 council's determination that an impasse exists, the council
877 shall appoint the arbitrator or arbitrators necessary to
878 complete the three-person panel, which shall act with the
879 same force and effect as if the panel had been selected.
880 without intervention of the council.

881 An arbitrator shall receive such compensation for
882 each day or part thereof for his services as a majority
883 of the council, subject to appropriation, shall establish.
884 He shall also receive, subject to appropriation, reimburse-
885 ment for all reasonable expenses actually and necessarily
886 incurred in the performance of his official duties.

887 The arbitration panel or the single arbitrator shall
888 within forty-five days after establishment resolve the
889 issues in dispute between the local assessment committee
890 and the developer. The council, upon request of the arbi-
891 tration panel or single arbitrator, may extend the time
892 permitted for the conduct of arbitration.

893 In the event that the parties mutually resolve each
894 of the issues in dispute and agree to be bound, they may
895 at any time prior to the final decisions of the panel or
896 single arbitrator request that the arbitration proceed-
897 ings be terminated, the panel acting through its chairman,
898 or the single arbitrator, shall terminate the proceedings.

899 The provisions of chapter two hundred and fifty-one
900 shall govern the conduct of arbitration proceedings pur-
901 suant to this section, including the provisions of said
902 chapter for judicial review of an arbitration decision.

903 Section 16. No license or permit granted by a city or
904 town shall be required for a hazardous waste facility
905 which was not required on or before the effective date of this
906 act by said city or town. All permits and licenses required for a
907 hazardous waste facility in a city or town shall be
908 granted or denied within sixty days after application
909 for said permits and licenses by the developer, or
910 twenty-one days after the establishment of a siting agree-
911 ment pursuant to sections twelve and thirteen of this
912 chapter, whichever is the later.

913 Section 17. If all permits and licenses required by law
914 have been issued to the developer and a siting agreement
915 has been established pursuant to sections twelve and
916 thirteen of this chapter, the developer may petition the
917 department to exercise its eminent domain authority pur-
918 suant to the provisions of chapter seventy-nine as author-
919 ized by section nineteen of chapter sixteen. Upon a
920 showing by the developer, after due notice and a hearing
921 thereon, that he has been unsuccessful in a good faith attempt
922 to acquire all or a portion of the site by purchase or lease,
923 the department shall exercise its eminent domain authority
924 to make said acquisition, subject to approval by a majority

925 vote of the city council, board of aldermen, or board of
926 selectmen pursuant to the provisions of section nineteen of
927 chapter sixteen. The department shall lease any land acquired
928 under this section for a hazardous waste facility for the
929 treatment, processing or disposal of hazardous waste to the
930 developer for the purpose of construction, maintaining, and
931 operating a privately owned hazardous waste facility. Any
932 land acquired under this section may be disposed of by the
933 department upon termination of a hazardous waste facility or
934 completion of use of a site, with the concurrence of the
935 department of environmental quality engineering, in the best
936 interest of the commonwealth and for a use compatible with
937 local zoning by-laws or ordinances; provided, however, that
938 in no event shall such land be so disposed of unless said
939 department, with the concurrence of the department of environ-
940 mental quality engineering, first offers, in writing, to
941 convey it to the city or town wherein such land lies for an
942 amount of money not less than the fair market value of the
943 land as determined by an independent appraisal which the
944 department has caused to be made, and such offer is not
945 accepted within two months after being made or is refused
946 by the chief executive officer of the city or town wherein
947 such land lies.

948 Section 18. This chapter shall not apply to any
949 hazardous waste facility exempt from the licensing
950 requirements of chapter twenty-one C which was law-
951 fully organized and in existence on May 1, 1980,
952 or to any hazardous waste facility which was licensed
953 as such by any division of the department of environ-
954 mental quality engineering as of May 1, 1980. If
955 any facility has its license revoked and reapplies for
956 a license after May 1, 1980, the provisions of this

957 chapter shall apply to said reapplication; provided,
958 however, that the provisions of this chapter shall
959 not apply to any facility, or the operation of any
960 facility under receivership by a federal or state agency
961 or by a judicially appointed and supervised receiver
962 of any court of competent jurisdiction where the license
963 of the facility has been suspended or revoked and said
964 receivership has been imposed.

965 Chapter twenty-one D shall not apply to any facility
966 which stores, treats, processes or disposes exclusively
967 of hazardous waste produced on-site. For purposes of
968 this section, on-site shall be defined to mean the same
969 or geographically contiguous property which may be divided
970 by public or private right-of-way, provided that the
971 entrance and exit between the properties is at a cross-
972 roads intersection, and access is by crossing as
973 opposed to going along the right-of-way; as well
974 as non-contiguous properties owned by the same
975 person but connected by a right-of-way which he
976 controls and to which the public does not have access.

977 Section 19. It is hereby declared that the provisions of
978 this act are severable, and if any provision of this act
979 shall be declared unconstitutional by the valid judgment
980 or decree of any court of competent jurisdiction, such
981 unconstitutionality shall not affect any of the remaining
982 provisions of this act.

